



000700

Contract #

059229

STATE OF UTAH CONTRACT

1. CONTRACTING PARTIES: This contract is between the following agency of the State of Utah:

Department: Department of Transportation Agency Code: 810 Division: Procurement, referred to as (STATE), and the following CONTRACTOR:Eastern Metal USA

Name

1430 Sullivan Street

Address

Elmira

NY

14901

City

State

Zip

Contact Person Jean HortonPhone # (800) 872-7446Email jorton@usa-sign.comFederal Tax ID# 6-0757659Vendor # 91181 ACommodity Code # 80112250483

LEGAL STATUS OF CONTRACTOR

☐ Sole Proprietor☐ Non-Profit Corporation☒ For-Profit Corporation☐ Partnership☐ Government Agency

2. GENERAL PURPOSE OF CONTRACT: The general purpose of this contract is to provide:
Provide Utah Department of Transportation with Portable Flexible Sign Stands.
3. PROCUREMENT: This contract is entered into as a result of the procurement process on RX#, RX-810-56000000121,
FY 2005 Bid# GL5044
4. CONTRACT PERIOD: Effective date 28 March 2005 Termination date 27 March 2009 unless terminated early
or extended in accordance with the terms and conditions of this contract. Renewal options (if any) One (1) one-year renewal option.
5. CONTRACT COSTS: CONTRACTOR: Requirements Contract See Attachment D for Pricing.
6. ATTACHMENT A: Division of Purchasing's Standard Terms and Conditions
ATTACHMENT B: Scope of Work
ATTACHMENT C: Special Terms and Condition
ATTACHMENT D: Pricing
- Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.
7. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:
- All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
 - Utah State Procurement Code, Procurement Rules, and CONTRACTOR'S response to Bid # GL5044
Dated: 23 March 2005

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

STATE

Stephen T. Zimar 4/4/05
Contractor's signature DateSTEPHAN T. ZIMAR
Type or Print Name and TitleMANAGER SALES ADMINISTRATIONKelvin G. Thacker 29 MAR 05
Kelvin G. Thacker, Procurement Manager DateDPT Thacker APR 29 2005
Director, Division of Purchasing DatePROCESSED BY
DIVISION OF FINANCE MAY 2 2005
Director, Division of Finance Date

ENT'D MAY 06 2005

MAY 06 2005

Paul Kikuchi

Agency Contact Person

801-965-4071

Telephone Number

801-965-4818

Fax Number

pkkuchi@utah.gov

E-Mail

ATTACHMENT A: STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.
4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.
7. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.
8. **EQUAL OPPORTUNITY CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the same persons or by persons holding the same position as persons who signed the original agreement on behalf of the parties hereto, and attached to the original signed copy of the contract.
11. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.
12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
13. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.
14. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
15. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable

for any special purposes that the State has relied on the contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

16. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, and may be available for distribution. and Contractor gives the State express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.
17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations.
18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.
19. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card.
20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.
21. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State.
22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of the contract:
1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The State will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future solicitations.
23. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.
24. **PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63-56-73, Utah Code Annotated, 1953, as amended).
25. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. State Standard Terms and Conditions; 2. State Special Terms and Conditions; 3. Contractor Terms and Conditions.

(Revision date: Nov 21, 2003)

Attachment B
Specifications
Flexible Sign Stand

1.0 General Description

This is a requirements contract to provide Utah Department of Transportation with Flexible Sign Stands Model X-553-TP. The duration of the contract will be 4-years with an optional 1-year renewal.

2.0 Product Requirements

2.1 General Requirements

- 2.1.1 Sign stand shall accommodate a roll-up sign.
48 inches by 48 inches solid substrate sign (ie: aluminum or wood).
- 2.1.2 Stand shall be constructed with a spring or springs that will allow the sign to flex in strong winds withstanding the push / pull force of large trucks.
The sign shall remain in an upright position or maintain a 45-degree angle in sustained winds of 35 miles per hour or more.
- 2.1.3 Stand shall be constructed in a manner that will eliminate the need for sandbags or tie downs to keep the stand erect in high winds.
- 2.1.4 Stand shall fold or telescope for easy storage and transportation.
- 2.1.5 Sign stand shall not exceed 41 pounds.

2.2 Material Requirements

- 2.2.1 Steel components shall be coated with a rust-resistant material that will withstand a minimum of 240-hours of salt spray test with no evidence of rust.
- 2.2.2 All coverings on steel components shall withstand weather conditions with no evidence of blistering, peeling, cracking, loss of adhesion discoloration, or rust after 1,000 hours exposure to weather testing.
- 2.2.3 Bolts used on stand shall be a minimum of 120,000 PSI tensile strength with self locking nuts.

2.3 Sign Stand Legs Requirements

- 2.3.1 Legs of the sign stand must be independently adjustable to accommodate uneven terrain surfaces.
- 2.3.2 Legs shall be constructed of a high quality aluminum alloy or a steel composition with rubber tips.
- 2.3.3 Legs shall be constructed from a minimum of 1 inch to a maximum of 1¼ inch outside dimension square tubular material with a minimum of 5/64-inch wall thickness to a maximum of 3/32-inch wall thickness.

2.4 Mast Support Requirements

- 2.4.1 Bottom mast support shall be constructed from aluminum alloy or steel square tubular design with a minimum of 1-inch to a maximum of 1¼-inch outside dimension square tubular material with a minimum of 5/64-inch wall thickness to a maximum of 3/32-inch wall thickness.
- 2.4.2 Sign support bracket will be constructed in such a manner that the corner of a solid substrate sign will fit into the bracket a minimum of 2½-inch diameter to a maximum of 9/16-inch diameter. The yoke shall be

Attachment B
Specifications
Flexible Sign Stand

constructed with a thumbscrew to hold the flags securely against strong winds.

2.5 Design Requirements

- 2.5.1 Sign stand shall be designed so the bottom of the roll up sign, when mounted on stand, will be a minimum of 1-foot off the ground and have the ability for the bottom of the sign to be raised to 3-feet above the ground.
- 2.5.2 One-person shall be able to erect sign stand and mount sign in approximately on minute.
- 2.5.3 Each stand shall be accompanied with a step by step instructions, covering set-up and take down, mounting of all accessories and showing individual part numbers.
- 2.5.4 Stand shall be able to be set up and taken down without tools. Replacement parts shall be field-replaceable with regular hand tools.

2.6 Test Requirements / Certification

- 2.6.1 Sign stand shall have passed all test requirements as stated in the National Cooperative Highway Research Program Report 350 (NCHRP-350) and the letter issued by the Federal Highway Administration stating acceptability shall be provided in the bid response.
- 2.6.2 Sign stands shall be indelibly marked, in the center of the mast, NCHRP-350 APPROVED, with the FHWA approved letter number. (Example: NCHRP-350 APPROVED WZ-500).
- 2.6.3 Prior to awarding the contract to supplier, Contractor shall provide the State with a letter of certification showing that the supplied product meets and complies all the specification requirements in this bid.

End

Attachment C
Special Terms and Conditions
Flexible Sign Stand

1.0 Delivery Address:

Utah Department of Transportation
Central Warehouse
4501 South 2700 West
Salt Lake City, Utah 84119

2.0 Invoicing

In the event the State is entitled to a cash discount, the period of computation shall commence on the delivery date or the date of a correct invoice, whichever is later. If an adjustment in payment is necessary due to damage, the cash discount period shall commence on the date final approval is authorized. The State reserves the right to adjust incorrect invoices.

Submit Invoices To:

Utah Department of Transportation
Accounts Payable
4501 South 2700 West
Box 141510
Salt Lake City, Utah 84114

State shall remit payment by U.S. mail or electronic transfer.

3.0 Quantity Estimates

The State does not guarantee to purchase any amount under this contract.

4.0 Pricing

The Contractor agrees prices on Flexible Sign Stands in this contract shall be guaranteed for at least four (4) years. Any change in prices must be made at least thirty (30) days prior to the requested effective date. Any such request must include sufficient documentation supporting this request. Request for change on any pricing in this contract shall not be effective until approved by the UDOT's Procurement Manager.

5.0 Delivery

Product shall be delivered to UDOT within 21-days after receipt of order.

6.0 Defectives

After UDOT has requested credit for defective product and the return of product is desired back, supplier shall pay for all shipping and handling charges back to supplier or factory. Contractor shall provide a UPS or similar pickup tag to UDOT. Credit or replacement of product shall be made within 15-days after initial request.

Attachment C
Special Terms and Conditions
Flexible Sign Stand

7.0 Replacement Parts

Supplier shall maintain a complete stock of all replacement parts. Parts shall be shipped within 24-hours after receipt of order.

Attachment D
Pricing
Flexible Sign Stands

0719229

1. Delivered price for flexible sign stands to:
Utah Department of Transportation
Central Warehouse
4501 South 2700 West
Salt Lake City, Utah 84020
 - 1.1 Model number X-553-TP
 - 1.2 Minimum order 25
 - 1.3 Price \$91.10 Delivered
 - 1.4 Price \$82.60 FOB Origin
 - 1.4 Lead time 14-days
 - 1.5 Quantity discounts N/A
 - 1.6 Other discounts N/A